

Short Title: GSC Technical Corrections 2021.

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AND  
SESSION LAWS AND TO MODIFY WHEN A DEBTOR IN A COMMERCIAL  
RECEIVERSHIP SHALL DELIVER RECEIVERSHIP PROPERTY TO THE RECEIVER.

The General Assembly of North Carolina enacts:

**PART I. AMENDMENTS RELATING TO N.C. COMMERCIAL RECEIVERSHIP ACT**

**SECTION 1.** G.S. 1-502 reads as rewritten:

**"§ 1-502. In what cases appointed.**

A receiver may be appointed in any of the following cases:

- (1) Before judgment, on the application of either party, when the party establishes an apparent right to property that is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired; a receiver, however, shall not be appointed in cases where judgment upon failure to answer may be had on application to the court.
- (2) After judgment, to carry the judgment into effect.
- (3) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply the property in satisfaction of the judgment.
- ~~(4) In cases provided in G.S. 1-507.1 and in similar cases, regarding property within this State of foreign corporations.~~
- (5) In cases where restitution is sought for violations of G.S. 75-1.1.

(6) In cases involving partition of real property, pursuant to G.S. 46A-28.

~~The provisions of Part 2 of Article 38 of Chapter 1 of the General Statutes apply to the appointment of a receiver of a corporation under this section."~~

**SECTION 2.** G.S. 1-507.20 reads as rewritten:

**"§ 1-507.20. Short title; definitions.**

(a) Short Title. – This Article may be cited as the North Carolina Commercial Receivership Act.

(b) Definitions. – The following definitions apply throughout this ~~Article unless the context requires otherwise:~~ Article:

(1) Affiliate. – As defined in G.S. 39-23.1(1).

(2) Business trust. – As defined in G.S. 39-44.

(3) Collateral. – The property subject to a lien.

(4) Consumer Debt. – Debt incurred by an individual primarily for a personal, family, or household purpose.

(5) Court. – The superior or district court in which the receivership is pending, except that in the case of a receiver appointed to partition real property pursuant to ~~G.S. 46-3.1, G.S. 46A-28,~~ the term shall mean the clerk of superior court that has jurisdiction over the receiver and the receivership.

(6) Debtor. – The person over whose property the receiver is appointed.

(7) Entity. – A person other than an individual.

(8) Executory contract. – A contract that is part of the receivership property, including a lease, where the obligations of both the debtor and the other party to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of

the contract, thereby excusing the other party's performance of its obligations under the contract.

(9) Foreign jurisdiction. – Any state or federal jurisdiction other than that of this State.

(10) Foreign receiver. – A receiver appointed in any foreign jurisdiction.

(11) General receiver. – The receiver appointed in a general receivership.

(12) General receivership. – A receivership over all or substantially all of the nonexempt property of a debtor for the purpose of liquidation and distribution to creditors and other parties in interest, including a receivership under the provisions of Chapters 55, 55A, 55B, 57D, or 59 of the General Statutes.

(13) Good faith. – Honesty in fact and the observance of reasonable commercial standards of fair dealing.

(14) Individual. – A natural person.

(15) Individual business debtor. – An individual owing consumer debt, on the date of the filing of the pleading seeking the appointment of a receiver under this Article for such individual, in an amount that is less than fifty percent (50%) of the individual's total debt.

(16) Insider. – As to any person, includes the following:

a. If the person is an individual, then any of the following:

1. A relative of the person or of a general partner of the person.

2. A partnership in which the person is a general partner.

3. A general partner in the partnership in which the person is a general partner.

4. A corporation or limited liability company of which the person is a director, officer, manager, managing member, or other person in control.
- b. If the person is a corporation or limited liability company, then any of the following:
  1. An officer, director, manager, or managing member of the person.
  2. A person in control of the person.
  3. A partnership in which the person is a general partner.
  4. A general partner in a partnership in which the person is a general partner.
  5. A relative of a general partner, officer, director, manager, managing member, or person in control of the person.
- c. If the person is a partnership, then any of the following:
  1. A general partner in the person.
  2. A relative of a general partner in, general partner of, or person in control of the person.
  3. Another partnership in which the person is a general partner.
  4. A general partner in a partnership in which the debtor is a general partner.
  5. A person in control of the person.
- d. An affiliate, or insider of an affiliate, as if ~~such~~the affiliate were the person.
- e. A managing agent of the person.

- (17) Insolvent. – With respect to a debtor, the sum of the debtor's debts is greater than all of the debtor's property, at a fair valuation, exclusive of (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud the debtor's creditors, or that has been transferred in a manner making transfer voidable under Article 3A of Chapter 39 of the General Statutes, and (ii) property that may be exempt from receivership property under Chapter 1C of the General Statutes.
- (18) Lien. – A charge against or interest in property to secure payment of a debt or the performance of an obligation.
- (19) Limited receiver. – The receiver appointed in a limited receivership.
- (20) Limited receivership. – A receivership other than a general receivership, including a receivership instituted as a supplemental proceeding to collect on a judgment pursuant to G.S. 1-363.
- (21) Party. – A person who is a party within the meaning of the North Carolina Rules of Civil Procedure in the action in which a receiver is appointed.
- (22) Party in interest. – Includes the debtor, an insider, any equity security holder in the debtor, any person with an ownership interest in or lien on receivership property, and, in a general receivership, any creditor of the debtor.
- (23) Person. – Includes both individuals and entities such as corporations, limited liability companies, partnerships, and other entities recognized under the laws of this State.
- (24) Property. – All of the debtor's right, title, and interest, both legal and equitable, in real and personal property, regardless of the manner by which any of ~~the same were or are~~ it was or is acquired. The term includes any proceeds, products, offspring, rents, or profits of or from the property. The term does

not include (i) any power that the debtor may exercise solely for the benefit of another person, (ii) a power of withdrawal exercisable by the debtor over property of a trust for which the debtor is not the settlor, to the extent that the power is not subject to the claims of the debtor's creditors pursuant to G.S. 36C-5-505(b), or (iii) if the debtor is an individual, any real property owned jointly by the debtor and the debtor's spouse that is held by them as a tenancy by the entireties, unless the debtor's spouse is also a debtor in the receivership and there is a joint debt owed to one or more creditors.

(25) Receiver. – A person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, control, and, if authorized by this Article or order of the court, dispose of receivership property.

(26) Receivership. – The case in which the receiver is appointed, and, as the context requires, the proceeding in which the receiver takes possession of, manages, or disposes of the debtor's property.

(27) Receivership property. – In the case of a general receivership, all or substantially all of the nonexempt property of the debtor, or in the case of a limited receivership, the property of the debtor identified in the order appointing the receiver, or in any subsequent order, and, in each case, except for the debtor's property that is wholly exempt from the enforcement of claims of creditors pursuant to applicable law, including without limitation, pursuant to G.S. 1-362, 1C-1601(a), 1C-1602, 25C-4, 30-15, 30-17, 131E-91(d)(5), and 135-9. ~~Notwithstanding the foregoing, receivership~~ Receivership property in a general receivership of an individual business ~~debtor shall~~ debtor, however, does not include (i) the principal residence of the individual business debtor

1 if the value of the principal residence is less than the combined amount of all  
2 liens and all rights of redemption and allowed claims of exemption in the  
3 principal residence and (ii) any consumer good if the value of ~~such~~the  
4 consumer good is less than the combined amount of all liens and all rights of  
5 redemption and allowed claims of exemption in ~~such~~the consumer good.

6 (28) Record. – When used as a noun, means information that is inscribed on a  
7 tangible medium or that is stored on an electronic or other medium and is  
8 retrievable in perceivable form.

9 (29) Secured obligation. – An obligation the payment or performance of which is  
10 secured by a security interest or a lien.

11 (30) Secured party. – A person entitled to enforce a secured obligation. The term  
12 includes a mortgagee under a mortgage and a beneficiary under a deed of trust.

13 (31) Security agreement. – An agreement that creates or provides for a lien. The  
14 term includes a mortgage and a deed of trust.

15 (32) Sign. – With present intent to authenticate or adopt a record, (i) to execute or  
16 adopt a tangible symbol or (ii) to attach to or logically associate with the  
17 record an electronic sound, symbol, or process.

18 (33) State agent and State agency. – Any office, department, division, bureau,  
19 board, commission, or other agency of this State or of any subdivision thereof,  
20 or any individual acting in an official capacity on behalf of any State agent or  
21 State agency.

22 (34) Time of appointment. – The date and time specified in the order of  
23 appointment of a receiver or, if the date and time are not specified in the order  
24 of appointment, the date and time that the court ruled on the application for  
25 the appointment of a receiver. The term does not mean any subsequent date or

time, including the execution of a written order, the filing or docketing of a written order, or the posting of a bond.

(35) Timeshare interest. – An interest having a duration of more than three years which grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.

(36) Utility. – A person providing any service regulated by the North Carolina Utilities Commission.

(37) Voidable transaction. – A transfer of an interest in property that is voidable under Article 3A of Chapter 39 of the General Statutes."

**SECTION 3.** G.S. 1-507.24 reads as rewritten:

**"§ 1-507.24. Appointment of receivers; receivership not a trust.**

(a) Action in Which Receivers Appointed. – A receiver may be appointed under this Article by the filing of a civil action by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver or is combined with, or is ancillary to, a civil action that seeks a money judgment or other relief, or in the case of a limited receivership, is part of a power of sale or judicial foreclosure proceeding. However, in the case of an individual business debtor, a creditor to whom only consumer debt is owing ~~may~~shall not file a civil action or motion to appoint a receiver for the individual business debtor. If the debtor files the complaint commencing a civil action in which the sole relief requested is the appointment of a receiver, then no summons under Rule 4 of the North Carolina Civil Rules of Procedure shall be necessary and the title of the action required by Rule 10 of the North Carolina Civil Rules of Procedure shall be:

"In re: \_\_\_\_\_ [name of debtor]".



(b) Appointment by Judge. – Either a judge of the Superior Court Division or the District Court Division may appoint a receiver for a debtor that is an individual business debtor. Only a judge of the Superior Court Division may appoint a receiver for an entity. Once a receiver is appointed, the following provisions apply:

- (1) If a receiver is appointed for an individual business debtor or if a limited receiver is appointed for an entity, the clerk shall provide a copy of the order appointing the receiver to the senior resident superior court judge or the ~~senior~~ chief district court judge for the court in which the receivership is pending. If the receivership is pending in the Superior Court Division, the senior resident superior court judge for the court in which the receivership is pending shall designate either one of the resident judges for the court in which the receivership is pending, or one of the nonresident judges of the Superior Court Division then assigned to the district in which the receivership is pending, to be the presiding judge over the receiver and the receivership. The presiding judge shall retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver discharged pursuant to G.S. 1-507.37, or until the senior resident superior court judge enters an order transferring jurisdiction and supervision of the receiver to another superior court judge. The judge of the Superior Court Division so designated shall retain jurisdiction and supervision notwithstanding the judge's rotation out of the district. If the receivership is pending in the District Court Division, the chief district court judge for the court in which the receivership is pending shall designate one of the judges of the District Court Division to retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver is discharged

1                   pursuant to G.S. 1-507.37, or until the chief district court judge enters an order  
2                   transferring jurisdiction and supervision of the receiver to another district  
3                   court judge.

4           (2)   If a general receiver is appointed for an entity, the senior resident superior  
5                   court judge shall promptly provide a copy of the order appointing the general  
6                   receiver to the Chief Justice through the Administrative Office of the Courts  
7                   and include special areas of expertise needed by the judge to be assigned and  
8                   may include a list of recommended judges. The Chief Justice shall designate  
9                   the receivership as an exceptional civil case pursuant to Rule 2.1 of the  
10                  General Rules of Practice for the Superior and District Courts unless the case  
11                  is designated as a mandatory complex business case under  
12                  G.S. 7A-45.4(b)(4). The judge of the Superior Court Division who appoints  
13                  the general receiver shall retain jurisdiction and supervision of the  
14                  receivership until the Chief Justice assigns the case to a judge pursuant to Rule  
15                  2.1 of the General Rules of Practice for the Superior and District Courts.

16   This subsection ~~shall~~does not apply to the appointment of a receiver in a pending action to  
17   partition real property pursuant to G.S. 46A-28.

18       (c)   Appointment Before Judgment. – A limited receiver may be appointed before  
19   judgment to protect a party that demonstrates an apparent right, title, or interest in property that  
20   is the subject of the action, if the property or its rents and profits is being subjected to or is in  
21   danger of waste, loss, dissipation, or impairment, or has been or is about to be the subject of a  
22   voidable transaction.

23       (d)   Appointment After Judgment. – A limited or general receiver may be appointed after  
24   judgment to carry the judgment into effect, or to dispose of property according to the judgment,

or to preserve the property pending an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

(e) Receiver for Entities and Individual Business Debtors. – In addition to those situations specifically provided for by law, a limited or general receiver may be appointed when an entity or an individual business debtor meets any of the following criteria:

- (1) The person is insolvent.
- (2) The person is not paying its debts as they become due unless such debts are the subject of a bona fide dispute.
- (3) The person is unable to pay its debts as they become due.
- (4) The person is in imminent danger of insolvency.
- (5) The person suspends its business for want of funds.
- (6) The person has forfeited or has suspended its legal existence.
- (7) The person had its legal existence expire by limitation.
- (8) The person is the subject of an action to dissolve ~~such~~ the person.

A limited receiver may also be appointed, in like cases, of the property located within this State of foreign persons.

(f) Foreclosure or Enforcement of Security Agreement. – In connection with a power of sale or judicial foreclosure proceeding or other enforcement of a security agreement, the court may appoint a limited receiver in any of the following circumstances:

- (1) The appointment is necessary to protect the property from waste, loss, spoilage, transfer, concealment, dissipation, or impairment.
- (2) The debtor agreed in a signed record to the appointment of a receiver on default.
- (3) The debtor agreed, after default and in a signed record, to the appointment of a receiver.

1           (4)    The property and any other collateral held by the secured party are not  
2                   sufficient to satisfy the secured obligation.

3           (5)    The debtor fails to turn over to the secured party the collateral or proceeds of  
4                   collateral, including rents, the secured party was entitled to collect.

5           (6)    The holder of a subordinate lien obtains the appointment of a receiver for the  
6                   same collateral held by the secured party.

7       (g)    Other Cases. – A receiver may be appointed in other cases as provided by law and  
8       equity.

9       (h)    Motion for Appointment of Receiver. – The court may appoint a receiver in an action  
10       described in subsection (a) of this section with 10 days' notice to the debtor, all other parties to  
11       the action, any judgment creditor who is seeking the appointment of a receiver in any other action,  
12       and other parties in interest and other persons as the court may require. The court may appoint a  
13       receiver ex parte or on shortened notice on a temporary basis, pending further order of the court,  
14       if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver  
15       and that a receiver is needed to avoid irreparable harm. In that event, the court shall set a hearing  
16       as soon as practicable and at the subsequent hearing, the burden of proof shall be as would be  
17       applicable to a motion made on notice that is not expedited.

18       (i)    Description of Receivership Property. – The order appointing the receiver or  
19       subsequent order shall describe the receivership property with particularity appropriate to the  
20       circumstances. If the order does not so describe the receivership property, until further order of  
21       the court, the receiver shall have control over all of the debtor's nonexempt property.

22       (j)    Receivership Not a Trust. – The order appointing the receiver does not create a trust.

23       (k)    Bad Faith Filing. – If the court denies a motion to appoint a receiver for an individual  
24       business debtor other than on consent of the party or parties seeking the appointment of the  
25       receiver and the debtor, and if the debtor does not waive the right to judgment under this

subsection, the court may grant judgment against the party or parties seeking the appointment of the receiver for any damages proximately caused by ~~such~~the filing, including costs and reasonable attorneys' fees, and punitive damages, if the court determines, after notice and hearing, that the motion was filed in bad faith."

**SECTION 4.** G.S. 1-507.30 reads as rewritten:

**"§ 1-507.30. Duties of debtor.**

(a) Duties. – In addition to those duties conferred by statute or order of the court, the debtor ~~shall have~~has the following duties:

- (1) To assist and cooperate fully with the receiver in the administration of the receivership and the receivership property and the discharge of the receiver's ~~duties,~~duties and to comply with all rules and orders of the court.
- (2) To deliver to the receiver, immediately upon the receiver's ~~appointment,~~appointment and demand, all of the receivership property in the debtor's possession, custody, or control, including all books and records, electronic data, passwords, access codes, statements of accounts, deeds, titles or other evidence of ownership, financial statements, financial and lien information, bank account statements, and all other papers and documents related to the receivership property.
- (3) To supply to the receiver information as requested relating to the administration of the receivership and the receivership property, including information necessary to complete any reports or other documents that the receiver may be required to file.
- (4) To remain responsible for the filing of all tax returns, including those returns applicable to periods which include those in which the receivership is in effect, except as otherwise ordered by the court.

(b) Debtor Not Individual. – If the debtor is not an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the debtor immediately before the appointment of the receiver.

(c) Enforcement. – If a person knowingly fails to perform a duty imposed by this section, the court may (i) compel the person to comply with that duty, (ii) award the receiver actual damages caused by the person's ~~failure~~, failure and reasonable attorneys' fees and costs, and (iii) sanction the person for civil contempt."

**SECTION 5.** G.S. 1-507.40 reads as rewritten:

**"§ 1-507.40. Turnover of receivership property.**

(a) Demand by Receiver. – Except as expressly provided in this section, and unless otherwise ordered by the court, upon demand by a receiver: (i) subject to subsection (b) of this section, any person shall turn over to the receiver any receivership property that is within the possession, custody, or control of that person and (ii) any person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent that the debt is subject to setoff or recoupment.

(b) Adequate Protection. – If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on or interest in the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

(c) Turnover Motion by Receiver. – A receiver may seek to compel turnover of receivership property required by ~~subdivision~~ clause (i) of subsection (a) of this section by motion in the receivership. If there exists a bona fide dispute with respect to the existence or nature of the receiver's or the debtor's interest in the receivership property, turnover shall be sought by means of an action under G.S. 1-507.38. Unless a bona fide dispute exists about a receiver's right

to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn over the property when required by this section.

(d) Payment Only to Receiver. – A person that has notice of the appointment of a receiver and owes a debt that is receivership property ~~may~~shall not satisfy the debt by payment to the debtor."

**SECTION 6.** G.S. 1-507.42 reads as rewritten:

**"§ 1-507.42. Stays.**

(a) Control of Property. – All receivership property shall be under the control and supervision of the court appointing the receiver.

(b) Stay by Court Order. – In addition to any stay provided in this section, the court may order a stay or stays to protect receivership property and to facilitate the administration of the receivership.

(c) Automatic Stay. – Except as otherwise set forth in subsection (f) of this section or ordered by the court, the entry of an order appointing a receiver shall operate as a stay, applicable to all persons, of an act, action, or proceeding: (i) to obtain possession of receivership property, or to interfere with or exercise control over receivership property, or enforce a judgment against receivership property, other than the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property and (ii) any act to create or perfect any lien against receivership property, except by exercise of a right of setoff, to the extent that the lien secures a claim that arose before the time of appointment.

(d) Limited Additional Automatic Stay in General Receiverships. – Except as otherwise ordered by the court, in addition to the stay provided in subsection (c) of this section, the entry of an order appointing a general receiver shall operate as a stay, applicable to all persons, of: (i) the commencement or continuation of a judicial, administrative, or other action or proceeding,

including the issuance or use of process, against the debtor or the receiver that was or could have been commenced before the time of appointment, or to recover a claim against the debtor that arose before the time of appointment and (ii) the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property.

Stays obtained for the acts specified in this subsection shall expire 60 days after the time of appointment unless, before the expiration of the 60-day period, the receiver or other party in interest files a motion seeking an order of the court extending the stay and before the expiration of an additional 30 days following the 60-day period, the court orders the stay extended.

(e) Modification of Stay. – The court may modify for cause any stay provided in this section upon the motion of any party in interest affected by the stay.

(f) Inapplicability of Stay. – The entry of an order appointing a receiver does not operate as a stay of any of the following:

- (1) The commencement or continuation of a criminal proceeding against the debtor.
- (2) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power.
- (3) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the debtor.
- (4) The establishment by a governmental unit of any tax liability and any appeal thereof.
- (5) The commencement or continuation of an action or proceeding to establish paternity, to establish or modify an order for alimony, maintenance, or



support, or to collect alimony, maintenance, or support under any order of a court.

(6) The exercise of a right of setoff.

(7) Any act to maintain or continue the perfection of a lien on, or otherwise preserve or protect rights in, receivership property, but only to the extent that the act was necessary to continue the perfection of the lien or to preserve or protect the lien or other rights as they existed as of the time of the appointment. If the act would require seizure of receivership property or commencement of an action prohibited by a stay, the continued perfection shall instead be accomplished by filing a notice in the court before which the receivership is pending and by serving the notice upon the receiver and receiver's attorney, if any, within the time fixed by law for seizure or commencement of the action.

(8) The commencement of a bankruptcy case under federal bankruptcy laws.

(9) Any other exception as provided in United States Code, Title 11, § ~~326(b)~~, 362(b), as to the automatic stay in federal bankruptcy cases in effect from time to time.

(g) Action Voidable. – The court may void an act that violates a stay under this section.

(h) Enforcement. – If a person knowingly violates a stay under this section, the court may award actual damages caused by the violation, reasonable attorneys' fees, and ~~costs~~, costs and may sanction the violation as civil contempt."

**SECTION 7.** G.S. 46A-28 reads as rewritten:

**"§ 46A-28. Court's authority to make orders before final determination of proceeding; notice and hearing.**

(a) Before final determination of a proceeding to partition real property, on application of any of the parties, the court may make any orders that it finds to be in the best interest of the

parties, including, but not limited to, orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, the appointment of a receiver pursuant to G.S. 1-502(6) or a limited receiver for the real property pursuant to Article 38A of Chapter 1 of the General Statutes, and access to the property for the purpose of inspecting, surveying, appraising, or selling the property.

(b) A party making a written application under subsection (a) of this section shall serve a copy of the application on all other parties and any other person the court may require. The court shall schedule a hearing on the application, if, within 10 days of being served, a person files a response in opposition to the application or requests a hearing. If no person files a response or requests a hearing within 10 days of being served, the court may decide the application without a hearing."

**SECTION 8.** G.S. 53C-9-401 reads as rewritten:

**"§ 53C-9-401. Statute Article relating to receivers applicable to insolvent banks.**

~~The provisions of G.S. 1-507.1 through 1-507.11, Article 38A of Chapter 1 of the General Statutes,~~ relating to receivers, when not inconsistent with the provisions of this Article, ~~shall~~ apply ~~applies~~ to the liquidation of banks under this Article."

## **PART II. GENERAL TECHNICAL CORRECTIONS**

**SECTION 9.** G.S. 42-34.1 reads as rewritten:

**"§ 42-34.1. Rent pending execution of judgment; post bond pending appeal.**

(a) If the judgment in district court is against the defendant appellant, it ~~shall be~~ is sufficient to stay execution of the judgment during the 30-day time period for taking an appeal provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant appellant posts a bond as provided in ~~G.S. 42-34(b), and no~~ G.S. 42-34(b). No additional security under G.S. 1-292 is required. If the defendant appellant fails to make rental payments as provided

in the undertaking within five days of the day rent is due under the terms of the residential rental agreement, the clerk of superior court shall, upon application of the plaintiff appellee, immediately issue a writ of possession, and the sheriff shall dispossess the defendant appellant as provided in G.S. 42-36.2.

(a1) If the judgment in district court is against the defendant appellant and the defendant appellant does not appeal the judgment, the defendant appellant shall pay rent to the plaintiff for the time the defendant appellant remains in possession of the premises after the judgment is given. Rent shall be prorated if the judgment is executed before the day rent would become due under the terms of the lease. The clerk of court shall ~~disperse~~ disburse any rent in arrears paid by the defendant appellant in accordance with a stipulation executed by all parties or, if there is no stipulation, in accordance with the judge's order.

(b) If the judgment in district court is against the defendant appellant and the defendant appellant appeals the judgment, it ~~shall be~~ is sufficient to stay execution of the judgment if the defendant appellant posts a bond as provided in ~~G.S. 42-34(b), and no~~ G.S. 42-34(b). No additional security under G.S. 1-292 is required. If the defendant appellant fails to perfect the appeal or the appellate court upholds the judgment of the district court, the execution of the judgment shall proceed. The clerk of court shall not ~~disperse~~ disburse any rent in arrears paid by the defendant appellant until all appeals have been resolved."

**SECTION 10.(a)** Subdivisions (1b) and (7) of G.S. 150B-2 are recodified as subdivisions (1a) and (5a) of G.S. 150B-2, respectively.

**SECTION 10.(b)** G.S. 150B-2, as amended by subsection (a) of this section, reads as rewritten:

**"§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (1) ~~"Administrative law judge" means a~~ Administrative law judge. – A person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1a) ~~"Adopt" means to~~ Adopt. – To take final action to create, amend, or repeal a rule.
- ~~(1a)(1b)"Agency" means an~~ Agency. – An agency or an officer in the executive branch of the government of this ~~State and~~ State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1c) ~~"Codifier of Rules" means the~~ Codifier of Rules. – The person appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings pursuant to G.S. 7A-760(b).
- (1d) ~~"Commission" means the~~ Commission. – The Rules Review Commission.
- (2) ~~"Contested case" means an~~ Contested case. – An administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. ~~"Contested case"~~ The term does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.
- (2a) Repealed by Session Laws 1991, c. 418, s. 3.
- (2b) ~~"Hearing officer" means a~~ Hearing officer. – A person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) ~~"License" means any~~ License. – Any certificate, ~~permit~~ permit, or other evidence, by whatever name called, of a right or privilege to engage in any

activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes, occupational licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163-165.7.

(4) ~~"Licensing" means any~~ Licensing. – Any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. ~~"Licensing"~~ The term does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(4a) ~~"Occupational license" means any~~ Occupational license. – Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) ~~"Occupational licensing agency" means any~~ Occupational licensing agency. – Any board, commission, ~~committee~~ committee, or other agency of the State of North Carolina ~~which~~ that is established for the primary purpose of regulating the entry of persons into, ~~and/or~~ or the conduct of persons within a particular profession, ~~occupation~~ occupation, or field of endeavor, and ~~which~~ that is authorized to issue and revoke licenses. ~~"Occupational licensing agency"~~ The term does not include State agencies or departments ~~which~~ that may as only a part of their regular function issue permits or licenses.

(5) ~~"Party" means any~~ Party. – Any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate.

- (5a) ~~"Person" means any~~ Person. – Any natural person, partnership, corporation, body ~~politic~~ politic, and any unincorporated association, organization, or society ~~which~~ that may sue or be sued under a common name.
- (6) ~~"Person aggrieved" means any~~ Person aggrieved. – Any person or group of persons of common interest directly or indirectly affected substantially in ~~his~~ his, her, or its person, property, or employment by an administrative decision.
- (7a) ~~"Policy" means any~~ Policy. – Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency ~~which~~ that is intended and used purely to assist a person to comply with the law, such as a guidance document.
- (8) ~~"Residence" means domicile~~ Residence. – Domicile or principal place of business.
- (8a) ~~"Rule" means any~~ Rule. – Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

- b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
- c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
  1. Declaratory rulings under G.S. 150B-4.
  2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- ~~l. Standards adopted by the Department of Information Technology~~  
State Chief Information Officer and applied to information technology  
~~as defined by G.S. 147-33.81, in G.S. 143B-1320.~~

(8b) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011.

(8c) ~~"Substantial evidence" means relevant~~ Substantial evidence. – Relevant  
evidence a reasonable mind might accept as adequate to support a conclusion.

(9) Repealed by Session Laws 1991, c. 418, s. 3."

**SECTION 10.(c)** G.S. 150B-38 reads as rewritten:

**"§ 150B-38. Scope; hearing required; notice; venue.**

(a) The provisions of this Article shall apply to:

- (1) Occupational licensing agencies.
- (2) The State Banking Commission, the Commissioner of Banks, and the Credit Union Division of the Department of Commerce.
- (3) The Department of Insurance and the Commissioner of Insurance.
- (4) The State Chief Information Officer in the administration of the provisions of Article 15 of Chapter 143B of the General Statutes.



(5) The North Carolina State Building Code Council.

(6) Repealed by Session Laws 2018-146, s. 4.4(b), effective December 27, 2018.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall ~~include~~ include all of the following:

(1) A statement of the date, hour, place, and nature of the ~~hearing~~ hearing.

(2) A reference to the particular sections of the statutes and rules ~~involved~~ and involved.

(3) A short and plain statement of the facts alleged.

(c) Notice shall be given by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice shall be deemed to have been given on the delivery date appearing on the return receipt, copy of proof of delivery provided by the United States Postal Service, or delivery receipt. If notice cannot be given by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3), then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party ~~who~~ that has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response ~~must~~ shall be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of

1 justice or better serve the convenience of witnesses, the agency or the administrative law judge  
2 may designate another county. A person whose property or rights are the subject matter of the  
3 hearing waives ~~his~~an objection to venue ~~if he proceeds by~~ proceeding in the hearing.

4 (f) Any person may petition to become a party by filing with the agency or hearing officer  
5 a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person  
6 interested in a contested case under this Article may intervene and participate to the extent  
7 deemed appropriate by the agency hearing officer.

8 (g) When contested cases involving a common question of law or fact or multiple  
9 proceedings involving the same or related parties are pending before an agency, the agency may  
10 order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make  
11 other orders to reduce costs or delay in the proceedings.

12 (h) Every agency shall adopt rules governing the conduct of hearings that are consistent  
13 with the provisions of this Article.

14 ~~(i) Standards adopted by the State Chief Information Officer and applied to information~~  
15 ~~technology as defined in G.S. 143B-1320."~~

16 **SECTION 10.(d)** G.S. 122C-151.4 reads as rewritten:

17 **"§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.**

18 (a) Definitions. – The following definitions apply in this section:

19 ~~(1) "Appeals Panel" means the State MH/DD/SA Appeals Panel established under~~  
20 ~~this section.~~

21 (1a) ~~"Client" means an~~ Client. – An individual who is admitted to or receiving  
22 public services from an area facility. ~~"Client"~~ The term includes the client's  
23 personal representative or designee.

(1b) ~~"Contract" means a~~ Contract. – A contract with an area authority or county program to provide services, other than personal services, to clients and other recipients of services.

(2) ~~"Contractor" means a~~ Contractor. – A person ~~who~~ that has a contract or ~~who~~ that had a contract during the current fiscal year.

(3) ~~"Former contractor" means a~~ Former contractor. – A person ~~who~~ that had a contract during the previous fiscal year.

(4) Panel. – The State MH/DD/SA Appeals Panel established under this section.

(b) Appeals Panel. – The State MH/DD/SA Appeals Panel is established. The Panel shall consist of three members appointed by the Secretary. The Secretary shall determine the qualifications of the Panel members. Panel members serve at the pleasure of the Secretary.

(c) ~~Who Can~~ Persons That May Appeal. – The following persons may appeal to the ~~State MH/DD/SA Appeals Panel~~ after having exhausted the appeals process at the appropriate area authority or county program:

(1) A contractor or a former contractor ~~who~~ that claims that an area authority or county program is not acting or has not acted within applicable State law or rules in denying the contractor's application for endorsement or in imposing a particular requirement on the contractor on fulfillment of the ~~contract;~~ contract.

(2) A contractor or a former contractor ~~who~~ that claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the ~~contract;~~ contract.

(3) A contractor or former contractor ~~who~~ that claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for

the type of services provided or formerly provided by the contractor or former  
~~contractor~~; contractor.

(4) A client or a person who was a client in the previous fiscal year, who claims  
that an area authority or county program has acted arbitrarily and capriciously  
in reducing funding for the type of services provided or formerly provided to  
the client directly by the area authority or county ~~program~~; and program.

(5) A person ~~who~~ that claims that an area authority or county program did not  
comply with a State law or a rule adopted by the Secretary or the Commission  
in developing the plans and budgets of the area authority or county program  
and that the failure to comply has adversely affected the ability of the person  
to participate in the development of the plans and budgets.

(d) Hearing. – All members of the ~~State MH/DD/SA Appeals~~ Panel shall hear an appeal  
to the Panel. An appeal shall be filed with the Panel within the time required by the Secretary  
and shall be heard by the Panel within the time required by the Secretary. A hearing shall be  
conducted at the place determined in accordance with the rules adopted by the Secretary. A  
hearing before the Panel shall be informal; no sworn testimony shall be taken and the rules of  
evidence do not apply. The person ~~who~~ that appeals to the Panel has the burden of proof. The  
Panel shall not stay a decision of an area authority during an appeal to the Panel.

(e) Decision. – The ~~State MH/DD/SA Appeals~~ Panel shall make a written decision on  
each appeal to the Panel within the time set by the Secretary. A decision may direct a contractor,  
an area authority, or a county program to take an action or to refrain from taking an action, but it  
shall not require a party to the appeal to pay any amount except payment due under the contract.  
In making a decision, the Panel shall determine the course of action that best protects or benefits  
the clients of the area authority or county program. If a party to an appeal fails to comply with a  
decision of the Panel and the Secretary determines that the failure deprives clients of the area

authority or county program of a type of needed service, the Secretary may use funds previously allocated to the area authority or county program to provide the service.

(f) Chapter 150B Appeal. – A person ~~who~~that is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding ~~G.S. 150B-2(1a)~~, G.S. 150B-2(1b), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the ~~State MH/DD/SA Appeals Panel~~ is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program.

(g) Limitation of Applicability. – This section does not apply to LME/MCOs, enrollees, applicants, providers of emergency services, or network providers subject to Chapter 108D of the General Statutes."

**SECTION 10.(e)** G.S. 150B-23 reads as rewritten:

**"§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.**

(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party ~~who~~that files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person ~~who~~that holds the license. A party ~~who~~that files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay

a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that  
~~the agency;~~ agency did any of the following:

- (1) Exceeded its authority or ~~jurisdiction;~~ jurisdiction.
- (2) Acted ~~erroneously;~~ erroneously.
- (3) Failed to use proper ~~procedure;~~ procedure.
- (4) Acted arbitrarily or ~~capriciously;~~ or capriciously.
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue  
delay. Any person aggrieved may commence a contested case ~~hereunder.~~ under this section.

A local government employee, applicant for employment, or former employee to whom  
Chapter 126 of the General Statutes applies may commence a contested case under this Article  
in the same manner as any other petitioner. The case shall be conducted in the same manner as  
other contested cases under this Article.

A business entity may represent itself using a nonattorney representative who is one or more  
of the following of the business entity: (i) officer, (ii) manager or member-manager, if the  
business entity is a limited liability company, (iii) employee whose income is reported on IRS  
Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the  
business entity, if the business entity authorizes the representation in writing and if the owner's  
interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice  
of nonattorney representation shall be made in writing, under penalty of perjury, to the Office on  
a form provided by the Office.

(a1) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1022, s. 1(9).

(a2) An administrative law judge assigned to a contested case may require a party to the  
case to file a prehearing statement. A party's prehearing statement ~~must~~ shall be served on all  
other parties to the contested case.

(a3) A Medicaid or NC Health Choice enrollee, or the enrollee's authorized representative, who appeals a notice of resolution issued by a managed care entity under Chapter 108D of the General Statutes may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases initiated by Medicaid or NC Health Choice enrollees under this Article. Solely and only for the purposes of contested cases commenced pursuant to G.S. 108D-15 by enrollees of LME/MCOs to appeal a notice of resolution issued by the LME/MCO, an LME/MCO is considered an agency as defined in ~~G.S. 150B-2(1a)~~. G.S. 150B-2. The LME/MCO ~~shall not be~~ is not considered an agency for any other purpose. When a prepaid health plan, as defined in G.S. 108D-1, other than an LME/MCO, is under contract with the Department of Health and Human Services to issue notices of resolution under Article 2 of Chapter 108D of the General Statutes, then solely and only for the purposes of contested cases commenced pursuant to G.S. 108D-15 to appeal a notice of resolution issued by the prepaid health plan, the prepaid health plan ~~shall be~~ is considered an agency as defined in ~~G.S. 150B-2(1a)~~. G.S. 150B-2. The prepaid health plan ~~shall not be~~ is not considered an agency for any other purpose.

(a4) If an agency fails to take any required action within the time period specified by law, any person whose rights are substantially prejudiced by the agency's failure to act may commence a contested case in accordance with this section seeking an order that the agency act as required by law. If the administrative law judge finds that the agency has failed to act as required by law, the administrative law judge may order that the agency take the required action within a specified time period.

(a5) A county that appeals a decision of the Department of Health and Human Services to temporarily assume Medicaid eligibility administration in accordance with G.S. 108A-70.42 or G.S. 108A-70.50 may commence a contested case under this Article in the same manner as any

1 other petitioner. The case shall be conducted in the same manner as other contested cases under  
2 this Article.

3 (b) The parties to a contested case shall be given a notice of hearing not less than 15 days  
4 before the hearing by the Office of Administrative Hearings. If prehearing statements have been  
5 filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing  
6 statements have not been filed in the case, the notice shall state the date, hour, place, and nature  
7 of the hearing, shall list the particular sections of the statutes and rules involved, and shall give a  
8 short and plain statement of the factual allegations.

9 (c) Notice shall be given by one of the methods for service of process under G.S. 1A-1,  
10 Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as  
11 provided by the United States Postal Service, or by designated delivery service authorized  
12 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice ~~shall be~~ is deemed to have been  
13 given on the delivery date appearing on the return receipt, copy of the proof of delivery provided  
14 by the United States Postal Service, or delivery receipt. If giving of notice cannot be  
15 accomplished by a method under G.S. 1A-1, Rule 4(j) or Rule 4(j3), notice shall then be given  
16 in the manner provided in G.S. 1A-1, Rule 4(j1).

17 (d) Any person may petition to become a party by filing a motion to intervene in the  
18 manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case  
19 may intervene and participate in that proceeding to the extent deemed appropriate by the  
20 administrative law judge.

21 (e) All hearings under this Chapter shall be open to the public. Hearings shall be  
22 conducted in an impartial manner. Hearings shall be conducted according to the procedures set  
23 out in this Article, except to the extent and in the particulars that specific hearing procedures and  
24 time standards are governed by another statute.



(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, ~~shall commence~~ commences when notice is given of the agency decision to all persons aggrieved ~~who~~ that are known to the agency by personal delivery, electronic delivery, or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, ~~and~~ shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing. When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State and issues an order pursuant to G.S. 7A-39(b), the chief administrative law judge may by order entered pursuant to this subsection extend, to a date certain no fewer than 10 days after the effective date of the order, the time or period of limitation, whether established by another statute or this section, for the filing of a petition for a contested case. The order shall be in writing and ~~shall become~~ becomes effective for each affected county upon the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the chief administrative law judge. The order shall provide that it ~~shall expire~~ expires upon the expiration of the Chief Justice's order.

(g) Where multiple licenses are required from an agency for a single activity, the Secretary or chief administrative officer of the agency may issue a written determination that the administrative decision reviewable under Article 3 of this Chapter occurs on the date the last license for the activity is issued, denied, or otherwise disposed of. The written determination of

the administrative decision is not reviewable under this Article. Any licenses issued for the activity prior to the date of the last license identified in the written determination are not reviewable under this Article until the last license for the activity is issued, denied, or otherwise disposed of. A contested case challenging the last license decision for the activity may include challenges to agency decisions on any of the previous licenses required for the activity."

**SECTION 11.** Section 5 of S.L. 2020-90 is repealed.

### **PART III. EFFECTIVE DATE**

**SECTION 12.** This act is effective when it becomes law.